

which service of a writ of summons could not be made upon the defendant.

The Kedah Enactment which by section 22 thereof provided:

"No suit for the specific performance of a contract shall be brought after the expiration of three years to be calculated from the time fixed for the performance, or where no such time is fixed from the time when performance is demanded and refused."

was repealed by the Limitation Ordinance No. 4 of 1953 with effect from 19th February, 1953, and as at that time administration had not been taken out the Kedah Enactment had no application to the action.

The question, therefore, is what is the position under the Limitation Ordinance, 1953. On this see the Court of Appeal decision in *Ponnu-sam v. Nathu Ram*⁽¹⁾.

That Ordinance is based on the English Act of 1939 and in England once time starts to run it continues to run (see *Williams on Executors*, 14th edition page 1132).

The relevant provision of the Limitation Ordinance 1953 (section 9 (1)) reads as follows:—

"No action shall be brought by any person to recover land after the expiration of twelve years from the date on which the right of action accrued to him....."

So here time ran against the plaintiff from the date on which the right of action accrued. There is some difficulty in saying precisely when the right of action accrued, but it was certainly not later than the first occasion on which a demand was made for a transfer. But from then until 1st October, 1949, there was a moratorium. The answer, therefore, would seem to be that the appropriate period of limitation in this case, which is twelve years, ran from 1st October, 1949, when the moratorium was lifted. This action, having been brought on 5th October 1960, that is before the expiration of twelve years from the date on which the right of action accrued to the plaintiff, is not therefore statute barred.

Accordingly, I enter judgment for the plaintiff as follows:

(a) that the defendant do transfer the said land comprised in Grant Surat Putus No. 4196, Portion No. 1067 in the Mukim of Bagan Semak, Bandar Bahru, Kedah, to the plaintiff; failing his compliance, the Assistant Registrar of this Court be empowered to sign the transfer for and on behalf of the defendant; and

(b) costs.

Judgment for the plaintiff.

Solicitors:—Jayadeva & Zahir; Chang Min Tat.

A K.V. PILLAI v. POWER FOAM RUBBER PRODUCTS (MFG) CO. LTD.

[O.C.J. (Gill J.) May 22, 1963]

[K.L. — Civil Suit No. 492 of 1962]

Master and Servant—Contract of service—Servant not required to work during first two months—Whether entitled to salary—Expiry of contract—Verbal renewal—Servant dismissed one month's notice—What is reasonable notice—Wrongful dismissal.

By a written contract of service, the defendants agreed to employ the plaintiff as their factory chemist and production manager for a period of one year from March 1, 1958 to February 28, 1959 at a salary of \$800 per mensem. On or about March 7, 1958 the plaintiff, with the consent of the defendants, went to India and did not return until the first week of May. He was not paid his salary for March and April. The defendants' factory did not start operating until July 1958. Towards the end of March 1959 the original contract was renewed by verbal agreement for an indefinite period and the plaintiff continued to work for the defendants. On March 9, 1961 the plaintiff gave three months' notice of termination of his services with the defendants. On March 30 the plaintiff's services with the defendants were terminated by the defendants who paid him a month's salary in lieu of notice. The defendants alleged that the plaintiff had committed an act of disobedience in refusing a meeting when called to do so by the managing director. The plaintiff brought an action claiming salary for March and April 1958, holiday and leave pay, 5 months' salary in lieu of notice and return of his books.

Held: (1) where a written agreement, which appears on the face of it to include all the terms agreed to by the parties, provides only for payment of wages or salary at certain times, no obligation to find work for the servant will be added, but if he remains ready to perform his services during the period covered by his contract, he is entitled to the agreed wages; therefore the plaintiff was entitled to his salary for March and April 1958;

(2) there was no provision made in the contract for holiday and leave pay and accordingly the plaintiff is not entitled to any additional salary;

(3) a contract of employment for an unspecified period can be terminated by either side on reasonable notice;

(4) considering the type of work for which the plaintiff was employed and the period for which he had worked for the defendants, reasonable notice should be three months notice;

(5) a single act of disobedience will justify dismissal only if it shows that the servant is repudiating the contract or one of its essential terms. The act of disobedience in not attending the meeting was insufficient to justify the plaintiff's dismissal.

Cases referred to:—

(1) *Williamson v. Taylor* (1843) 5 Q.B. 175; 114 E. R. 1214.

(2) *Aspdin v. Austin* (1844) 5 Q.B. 671; 114 E.R. 1402.

(3) *Dunn v. Sayles* (1844) 5 Q.B. 685; 114 E.R. 1408.

(4) *Emmens v. Elderton* (1853) 4 H. L. Cas. 624, 650; 10 E.R. 606, 616.

(5) *Lagerwall v. Wilkinson, Henderson & Clarke Ltd.* (1899) 80 L.T. 55.

(6) *Turner v. Sawdon & Co.* [1901] 2 K.B. 653.

- (7) *Spain v. Arnott* (1817) 2 Stark 256; 171 E.R. 638.
(8) *Turner v. Mason* (1845) 14 M. & W. 112; 153 E.R. 411.
(9) *Laws v. London Chronical (Indicator Newspapers) Ltd.* [1959] 1 W.L.R. 698, 700.

ACTION.

B. Kaher Singh for the plaintiff.

Thean Lip Ping for the defendants.

Cur. Adv. Vult.

Gill J.: This action arises out of a written contract of service dated the 20th day of November, 1957 whereby the defendants agreed to employ the plaintiff as their factory chemist and production manager for a period of one year from 1st March, 1958 to 28th February, 1959 at a salary of \$800 per mensem. On the date of the agreement the plaintiff was employed as a factory manager and chemist of Malayan Latex Ltd., Johore Bahru, with whom his contract of employment was due to expire on 28th February, 1958. On or about 7th March, 1958 the plaintiff left for India. The defendants agreed to his going away to India and did not remind him that he was required to assume duty on 1st March, 1958, presumably because their factory was not ready. They promised to contact him if there was any hitch about the setting up of their factory and he agreed to give them any assistance during his stay in India. He returned from India during the first week of May, 1958 but the factory did not start operating until July 1958 so that there was practically no work for him to do during those two months. His salary for May and June, 1958 was paid but he was not paid for March and April, 1958 when he was in India.

The original agreement, which was for one year, was renewed under some sort of verbal agreement towards the end of March 1959 and the plaintiff continued to work for the defendants thereafter. By March 1961 the defendants were in arrears of salary to the plaintiff in the sum of \$5,451.28 which included a sum of \$1,600 as salary for the months of March and April, 1958. On 9th March, 1961 the plaintiff, because of the alleged breach of duty by the defendants to pay his salary on due dates, gave three months' notice of termination of his services with the defendants. On 30th March, 1961 at about 5 p.m. he was told that he was no longer working for the company and that he should leave their premises immediately. The watchman of the factory was instructed not to let him in again. The then Managing Director of the company, however, says that the plaintiff failed to turn up for work on 30th March, 1961 and kept the keys to the factory and to the laboratory to himself. He therefore wrote a letter to the plaintiff (P.3)

A enclosing a cheque for \$1,851.28, being the balance of his salary including the salary for March 1961 and the salary for April 1961 in lieu of notice after making a deduction of \$864.12 for income tax.

B The plaintiff also alleges that during the period of his service he worked on 30 public holidays and that he was entitled to 63 days' leave during the period of his service, of which he did not avail himself, so that he is entitled to 93 days' holiday and leave pay at \$26.60 per day, making a total of \$2,480. He further alleges that the defendants wrongly terminated his services by giving him a month's notice and paying him a month's salary in lieu of notice when he should have been given six months' notice. He therefore claims \$4,000, being five months' further salary in lieu of notice. His claim thus falls under the following heads:—

- C**
D (a) salary for March and April, 1958 amounting to \$1,600;
(b) holiday and leave pay for 93 days amounting to \$2,480;
(c) five months' salary in lieu of notice amounting to \$4,000; and
E (d) for the return of his textbooks, notebooks and brief case which he says he was not allowed to remove from the defendants' premises.

The defendants deny the plaintiff's claim in its entirety.

F To take first the claim of \$1,600 as salary for the months of March and April, 1958, it is common ground that the plaintiff was in India during these two months. He went to India with the knowledge and consent of the defendants and there was nothing said to him as to his being required to be on duty on 1st March, 1958. It is also to be observed that there was no stipulation in the agreement as to the date on which the plaintiff was to start work for the defendants. Whether he is entitled to succeed on this claim depends entirely on the construction of the agreement under which he was appointed. In this connection the generally accepted view is that while the contract of employment lasts the master is under no obligation to provide the servant with work, but he is bound to pay the wages agreed upon. In *Williamson v. Taylor*⁽¹⁾, where there was an agreement of service in writing, the court held that they were bound to judge of its meaning and intent only by its terms, and that there was no room for any further implication. In *Aspdin v. Austin*⁽²⁾ Lord Denman C.J. expressed the view that "where parties have entered into written agreements with expressed

stipulations, it is manifestly not desirable to extend them by implication: the presumption is that, having expressed some, they have expressed all the conditions by which they intend to be bound under that instrument". This view of the law was reiterated by Lord Denman C.J. in the case of *Dunn v. Sayles*⁽³⁾. In *Emmens v. Elderton*⁽⁴⁾ Talfourd J. said:

"The cases of *Aspdin v. Austin* and that of *Dunn v. Sayles* seem to establish that a contract, whether under seal or not under seal, to pay wages or salary during a stipulated time, does not imply an obligation to retain or employ the party entitled to receive it during the corresponding period; that, if able and willing to render service, he is entitled to demand his wages; but that he cannot insist on being enabled to earn them."

In *Lagerwall v. Wilkinson, Henderson & Clarke Ltd.*⁽⁵⁾ where a commercial traveller was employed at a salary for a fixed period, it was held that so long as the salary was paid during the period there was no obligation to provide work. In *Turner v. Sawdon & Co.*⁽⁶⁾ the defendants agreed to engage and employ the plaintiff as their representative salesman for a period of four years. Before the expiration of that time the defendants, though willing to continue to pay wages, refused to give him any work to do as their representative salesman. In an action to recover damages for breach of contract, it was held that a master commits no breach of contract in refusing to give his servant any work to do, so long as he pays the agreed wages. The servant's remedy, if he dislikes enforced idleness, is to terminate his agreement by giving the requisite notice. As Stirling L.J. said in this case:

"The question is, what is the meaning of the word 'employ' as used in this agreement? It seems to me clear, and if authority be required we find it in the case of *Emmens v. Elderton*, that the word 'employ' is capable of two meanings—to retain in service, or to give actual work to be done by the person employed."

It would seem clear that the use of the word "employ" does not involve an obligation upon the master to find employment or work but merely to keep the servant in his employ in the sense of paying him wages. It follows therefore that the fact that the master can find no work to give to his servant does not absolve him from paying the wages agreed upon under a written contract of service. It will be observed that in the cases referred to above the question was whether the master was obliged to provide work for the servant during the period of the agreement. These authorities support the view that where a written agreement, which appears on the face of it to include all the terms agreed to by the parties, provides only for the payment of wages or salary at certain times, no implied obligation to find work for the servant will be added, but if he remains ready to perform his services during the period covered by his contract, he is

A entitled to the agreed wages (see *Halsbury's* 3rd edition, volume 25, para. 905 at page 468).

B I am not forgetting that normally an agreement to pay wages is made in consideration of service, but in this case the agreement in its very terms was purely exclusive. It bound the plaintiff to carry out the orders of the employer and it bound him not to accept work from any other company or firm doing the same type of business and manufacturing similar products as the defendants. It bound him by implication to hold himself in readiness whenever required to undertake the type of work for which the defendants employed him. The very foundation of the contract was his appointment, during the contract period, to a specific office. His right to wages therefore arises under the contract of service in accordance with the ordinary principles of the law of contract. It was open to the defendants, if they so wished, to provide in the agreement that the plaintiff shall commence to draw salary only from the day on which he started doing work for them. As they failed to do so, they now cannot be heard to say that his salary for the months of March and April is not payable merely because he did no work for them. In the circumstances I hold that the plaintiff is entitled to succeed on his claim for salary for the months of March and April, 1958.

E As regards plaintiff's claim for salary for working on holidays and during the period of any leave which he might have taken, it can only succeed if it can be shown that there was any provision made in the contract for holiday and leave pay. The plaintiff is in effect claiming additional remuneration which can only be recovered when it is the subject of a distinct agreement. As there was no such separate agreement, this claim of the plaintiff must fail. I do not accept the plaintiff's contention that the defendants agreed to pay him any additional salary for working on holidays and there is no evidence that the defendants ever agreed to allow him 21 days leave with pay in each year of his service.

G I now come to the plaintiff's claim for five months salary in lieu of notice. He makes this claim on the basis that he was entitled to six months notice of termination of service. The defendants deny that under the agreement of 20th November, 1957 or under any other agreement or under any circumstances the proper notice for terminating the plaintiff's services was six months. They admit giving the plaintiff one month's salary in lieu of notice when discharging the plaintiff from the service.

I The question of notice again depends on what the parties agreed expressly or by implication. The agreement of 20th November, 1957

provided that if on the expiration of the agreement on 28th February, 1959 the employee for some reason or other did not wish to carry on working with the employer, he must give at least six months time for the employer to engage another factory manager and chemist to take his place. There was no provision in the agreement as to the length of notice required to be given by the employer if he wished to terminate the services of the employee. The agreement further provided that "if both parties agree to join hands again, then a fresh agreement shall be made forthwith."

It is clear that the parties did not choose to draw up a fresh agreement as provided in the original agreement. The plaintiff's evidence is that the original agreement was renewed verbally for an indefinite period some time towards the end of March 1959 and that he continued to work for the defendants thereafter on that basis. The defendants, on the other hand, contend that the agreement was not extended by signing, but the plaintiff continued working on the terms of the old agreement. The circumstances indicate that after the expiration of the original agreement the plaintiff was to carry on working for an indefinite period so that his contract of employment became a contract of employment for an unspecified period which could be terminated by either side on reasonable notice. Considering the type of work for which the plaintiff was employed and the period for which he had worked for the defendants, I am of the opinion, and I so hold, that reasonable notice in this case should be three months notice. The plaintiff in fact gave three months notice on 9th March, 1961. The defendants' contention that the plaintiff acted in breach of the agreement in that he gave only three months notice, and that therefore they were justified in terminating the agreement and dismissing him from their service, must therefore fail.

The defendants further allege that the plaintiff misconducted himself in the service (a) by wilfully disobeying reasonable orders of the defendants given in the course of the service, (b) by habitually neglecting and failing to perform his duties and (c) by being habitually absent from work without permission and without reasonable cause during the months of February and March, 1961. They contend that for these reasons they discharged the plaintiff from the service. I must say that none of these alleged acts of misconduct has been proved so as to tip the scales in favour of the defendants on the balance of probabilities. I accept the evidence of the plaintiff that on 30th March, 1961, he was told not to come back to work and that he stayed away from work thereafter because of that. The plaintiff had given his three months notice and

A he was working out his period of notice. The defendants obviously did not wish him to stay and therefore told him to go and subsequently paid him a month's salary in lieu of notice. This is clear from their letter dated 5th April, 1961 (P.3) addressed to the plaintiff.

B The act of disobedience is the alleged failure on the part of the plaintiff to attend a meeting on 8th March, 1961 at which Mr. Angrove and Mr. Parker were present. Mr. Thean on behalf of the defendants contended that because of plaintiff's refusal to obey the order of the managing director to attend the meeting the defendants were justified in summarily dismissing the plaintiff. In support of this contention he cited the cases of *Spain v. Arnott*⁽⁷⁾ and *Turner v. Mason*⁽⁸⁾. There is no doubt that a servant may be dismissed if he wilfully disobeys any lawful order of his master, but a single act of disobedience will justify dismissal only if it shows that the servant is repudiating the contract or one of its essential terms. In *Laws v. London Chronical (Indicator Newspapers) Ltd.*⁽⁹⁾ Lord Evershed M.R. in referring to *Turner v. Mason* said,

E "...but it would in my judgment be going too far to say that any of those judges laid it down as a proposition of law that every act of disobedience of a lawful order must entitle the employer to dismiss. I think that cannot be extracted from the judgments; and I am satisfied that it is too narrow a proposition as one of law."

Bearing those observations of Lord Evershed in mind, I am of the opinion that the defendants were not justified in dismissing the plaintiff because of that single alleged act of disobedience.

F The defendants also allege that they dismissed the plaintiff because he was not reasonably competent to perform the services for which he was engaged under the agreement. Incompetence is certainly a ground for dismissal, but the defendants have failed to prove in what way the plaintiff was found incompetent. He had worked as a production manager and chemist for three years for a firm which was manufacturing foam rubber. The defendants sought him out and offered him a job in their factory which they were proposing to put up. He worked for them for three years during the whole of which period they had no reason to be dissatisfied with his work. He was probably not a first-rate chemist, but there is no evidence that he was incompetent. He had had some practical experience before he joined the defendants and he worked for them to the best of his ability. The fact that he was not prepared to divulge to Mr. Angrove of the Rubber Research Institute his formula for making foam rubber cannot lead to the inference that he was incompetent. It is true that a fairly large percentage of the foam rubber manufactured under the plaintiff's supervision was not saleable, but his evidence is that

this was due to the fact that the defendants were using too much clay. Mr. Angrove's report on the factory seems to suggest that the factory was badly run but he did to a certain extent corroborate the plaintiff's story as to the too high a loading of cheap filler.

Taking all these factors into account, in my judgment the defendants were not justified in summarily dismissing the plaintiff. In fact the evidence indicates that the plaintiff was not summarily dismissed, as he was given a month's salary in lieu of notice. This brings me back to the question of length of notice. I have already said that the plaintiff was entitled to give three months notice of termination of his service which he did on 9th March, 1961. The defendants should have allowed him to work out his period of notice, instead of which they wrongly gave him a month's notice. If they did not wish to keep him in the factory any longer, they should have given him three months notice instead of one month's notice. The plaintiff is therefore entitled to damages in the sum of \$1,600, being two months salary.

There remains the plaintiff's claim for the return of textbooks, notebooks and attache case. He has not given any particulars as to what these textbooks etc. were. He had the key to the factory and his office when he left and I cannot accept his story that he left behind any of his belongings when he was told not to come back to work. This part of his claim will therefore be dismissed.

In the result there will be judgment for the plaintiff for \$3,200 with costs.

Judgment for the plaintiff.

Solicitors:—*B. Kaher Singh & Karam; Shook Lin & Bok.*

NEOH SIEW ENG & ANOR. v. TOO CHEE KWONG

[O.C.J. (Gill J.) May 22, 1963]

[K.L.—Civil Suit No. 56 of 1963]

Landlord and Tenant—Agreement to supply water by landlord—Extent of—Supply cut off due to corroded pipe—Breach of agreement—Perpetual injunction—Damages.

Landlord and Tenant—Premium—Control of Rent Ordinance, 1956, s.4—Payment by tenant towards cost of building staircase—Whether a premium—Whether permission of Rent Assessment Board required under s.6.

The plaintiffs are the tenants of rent-controlled premises of which the defendant was the landlord. One of the terms of the tenancy was that the defendant as landlord and registered consumer in respect of water supply to the whole of the premises would pay \$2 towards the water charges and that the plaintiffs would pay the

A amount in excess of that sum. As a result the plaintiffs had an uninterrupted flow of water to their part of the premises from the date of commencement of the tenancy in January 1962 until December 24, 1962 when the water supply stopped owing to the corroded state of the pipe. The defendant did nothing to repair the pipe until the Court made an interim order requiring her to restore the water supply on February 20, 1963.

B Before they went into occupation of the premises the plaintiffs paid to the defendant a sum of \$1,500 which the learned judge found to have been a contribution by the plaintiffs to the building of a staircase. In this action by the plaintiffs for restoration of the water supply, damages and return of the sum of \$1,500.

C Held: (1) the defendant was under an obligation not only to see that the supply of water was not deliberately cut off but also to use her best endeavours to keep all communication pipes in proper repair and generally to comply with all regulations of the Waterworks Department so that the water supply was not cut off;

(2) the plaintiffs are therefore entitled to damages and a perpetual injunction requiring the defendant to keep the water supply open;

D (3) the sum of \$1,500 being a contribution by the tenants towards work done by the landlord at the express wish of the tenants and not a payment in respect of the tenancy, was not a premium;

(4) section 6 of the Control of Rent Ordinance has no application.

Cases referred to:—

E (1) *R. v. Fulham, Hammersmith and Kensington, Rent Tribunal* [1950] 2 All E.R. 211.

(2) *Day v. Singleton* [1899] 2 Ch. 320.

ACTION.

Richard Talalla for the plaintiffs.

S. Y. Chan for the defendant.

Cur. Adv. Vult.

Gill J.: This is an action by the plaintiffs as the tenants of the first floor of the premises known as No. 59, Bukit Bintang Road, Kuala Lumpur for (a) an injunction requiring the defendant as the landlord of the premises forthwith to restore the water supply to the first floor of the premises, (b) special and general damages arising out of the alleged cutting off by the defendant of the water supply and (c) the return of a sum of \$1,500 alleged to have been paid by the plaintiffs as premium for the granting of the tenancy.

H The premises are governed by the Control of Rent Ordinance, 1956 and the plaintiffs became the tenants under an oral contract of tenancy in January 1962 at a rent of \$200 a month which was later increased to \$206 a month. The defendant occupies the ground floor with her husband who is carrying on business as a medical practitioner on the premises. Both parties agree that one of the terms of the tenancy was that the defendant as the landlord and registered consumer in respect of water supply to the whole of the premises would pay \$2 towards